

AMENDED IN ASSEMBLY APRIL 14, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1709

Introduced by Assembly Member Gallagher
(Coauthors: Assembly Members Kim, Lackey, and Mathis)
(Coauthors: Senators Anderson and Nielsen)

January 25, 2016

An act to amend Section 754 of the Evidence Code, relating to courts.

LEGISLATIVE COUNSEL’S DIGEST

AB 1709, as amended, Gallagher. Courts: interpreters: deaf or hard of hearing.

Existing law, in any civil or criminal action where a party or witness is an individual who is deaf or hearing impaired and that individual is present and participating, requires the proceedings to be interpreted in a language that the individual who is deaf or hearing impaired understands by a qualified interpreter appointed by the court or other appointing authority, or as agreed upon. Existing law defines a qualified interpreter as an interpreter who has been certified as competent to interpret court proceedings by a testing organization, agency, or educational institution approved by the Judicial Council as qualified to administer tests for court interpreters for individuals who are deaf or hearing impaired. Existing law requires each superior court to maintain a current roster of qualified interpreters.

This bill would replace the term “hearing impaired” with the term “hard of hearing,” and would replace the term “qualified interpreter” with the term “court-certified interpreter.” The bill would define a court-certified interpreter as an interpreter who has been certified as competent to interpret court proceedings by an organization approved

~~pursuant to the California Rules of Court and who is listed on the Judicial Council's list of recommended court interpreters. The bill would authorize a court, for good cause, to appoint an interpreter who is not court-certified and would require the court to follow certain procedures and guidelines when making the appointment. The bill would delete the requirement that each superior court maintain a current roster of qualified interpreters. *hearing.*"~~

~~Existing law requires a good faith effort to secure the services of an interpreter to be made whenever a peace officer or other person having a law enforcement or prosecutorial function in certain investigations and proceedings questions or otherwise interviews an alleged victim or witness who demonstrates or alleges deafness or hearing impairment. Existing law requires the payment of the interpreter's fee incurred during the questioning or interview to be a charge against the county, or other political subdivision of the state, in which the action is pending.~~

~~This bill would instead require payment of the interpreter's fee to be a charge against the employer of the investigating peace officer or other person questioning or otherwise interviewing the alleged victim or witness, as described above.~~

~~Existing law prohibits a written or oral statement made by an individual who the court finds is deaf or hearing impaired in reply to question of a peace officer or other person having a law enforcement or prosecutorial function in certain investigations and proceedings from being used against that individual unless the question was accurately interpreted and the statement was made knowingly, voluntarily, and intelligently and was accurately interpreted, or the court finds the individual could not have used an interpreter or an interpreter was not otherwise required by a specified federal law, and the statement was made knowingly, voluntarily, and intelligently.~~

~~This bill would prohibit a court from considering a statement attributed to a person who is deaf or hard of hearing unless the statement was accurately interpreted, or the individual could not have used an interpreter or an interpreter was not otherwise required by a specified federal law.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 754 of the Evidence Code is amended to read:

754. (a) As used in this section, “individual who is deaf or hard of hearing” means an individual with a hearing loss so great as to prevent his or her understanding language spoken in a normal tone, but does not include an individual who is hard of hearing provided with, and able to fully participate in the proceedings through the use of, an assistive listening system or computer-aided transcription equipment provided pursuant to Section 54.8 of the Civil Code.

(b) In any civil or criminal action, including an action involving a traffic or other infraction, a small claims court proceeding, a juvenile court proceeding, a family court proceeding or service, or a proceeding to determine the mental competency of a person, in any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, or—~~a~~ *an* administrative hearing, where ~~a party, witness, or juror~~ *party or witness* is an individual who is deaf or hard of hearing and the individual who is deaf or hard of hearing is present and participating, the proceedings shall be interpreted in a language that the individual who is deaf or hard of hearing understands by ~~a court-certified~~ *qualified* interpreter appointed by the court or other appointing authority, or as agreed upon.

(c) For purposes of this section, “appointing authority” means a court, department, board, commission, agency, licensing or legislative body, or other body for proceedings requiring a ~~court-certified~~ *qualified* interpreter.

(d) For purposes of this section, “interpreter” includes an oral interpreter, a sign language interpreter, or a deaf-blind interpreter, depending upon the needs of the individual who is deaf or hard of hearing.

(e) For purposes of this section, “intermediary interpreter” means an individual who is deaf or hard of hearing, or a hearing individual who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language or between American Sign Language and other foreign languages by acting as an intermediary between the individual

1 who is deaf or hard of hearing and the ~~court-certified~~ *qualified*
2 interpreter.

3 (f) For purposes of this ~~section~~, “~~court-certified~~ *section*,
4 “*qualified* interpreter” means an interpreter who has been certified
5 as competent to interpret court proceedings by ~~an organization~~
6 ~~approved pursuant to the California Rules of Court and who is~~
7 ~~listed on the Judicial Council’s list of recommended court~~
8 ~~interpreters.~~ *a testing organization, agency, or educational*
9 *institution approved by the Judicial Council as qualified to*
10 *administer tests to court interpreters for individuals who are deaf*
11 *or hard of hearing.*

12 (g) If the appointed interpreter is not familiar with the use of
13 particular signs by the individual who is deaf or hard of hearing
14 or his or her particular variant of sign language, the court or other
15 appointing authority shall, in consultation with the individual who
16 is deaf or hard of hearing or his or her representative, appoint an
17 intermediary interpreter.

18 (h) ~~For good cause, a court may appoint an interpreter who is~~
19 ~~not court-certified. When appointing an interpreter who is not~~
20 ~~court-certified, the court shall follow the good cause and~~
21 ~~qualification procedures and guidelines for uncertified or~~
22 ~~unregistered spoken language interpreters set forth in Section~~
23 ~~68561 of the Government Code and those adopted by the Judicial~~
24 ~~Council.~~

25 (h) (1) *Before July 1, 1992, the Judicial Council shall conduct*
26 *a study to establish the guidelines pursuant to which it shall*
27 *determine which testing organizations, agencies, or educational*
28 *institutions will be approved to administer tests for certification*
29 *of court interpreters for individuals who are deaf or hard of*
30 *hearing. It is the intent of the Legislature that the study obtain the*
31 *widest possible input from the public, including, but not limited*
32 *to, educational institutions, the judiciary, linguists, members of*
33 *the State Bar, court interpreters, members of professional*
34 *interpreting organizations, and members of the deaf and hard of*
35 *hearing communities. After obtaining public comment and*
36 *completing its study, the Judicial Council shall publish these*
37 *guidelines. By January 1, 1997, the Judicial Council shall approve*
38 *one or more entities to administer testing for court interpreters*
39 *for individuals who are deaf or hard or hearing. Testing entities*

1 *may include educational institutions, testing organizations, joint*
2 *powers agencies, or public agencies.*

3 (2) *Commencing July 1, 1997, court interpreters for individuals*
4 *who are deaf or hard of hearing shall meet the qualifications*
5 *specified in subdivision (f).*

6 (i) Persons appointed to serve as interpreters under this section
7 shall be paid, in addition to actual travel costs, the prevailing rate
8 paid to persons employed by the court to provide other interpreter
9 services unless such service is considered to be a part of the
10 person's regular duties as an employee of the state, county, or other
11 political subdivision of the state. Except as provided in subdivision
12 (j), payment of the interpreter's fee shall be a charge against the
13 court. Payment of the interpreter's fee in administrative
14 proceedings shall be a charge against the appointing board or
15 authority.

16 (j) Whenever a peace officer or any other person having a law
17 enforcement or prosecutorial function in any criminal or
18 quasi-criminal investigation or non-court proceeding questions or
19 otherwise interviews an alleged victim or witness who demonstrates
20 or alleges deafness or hearing loss, a good faith effort to secure
21 the services of a court-certified *an* interpreter shall be made without
22 any unnecessary delay, unless either the individual who is deaf or
23 hard of hearing affirmatively indicates that he or she does not need
24 or cannot use an interpreter, or an interpreter is not otherwise
25 required by Title II of the federal Americans with Disabilities Act
26 of 1990 (Public Law 101-336) and federal regulations adopted
27 thereunder. Payment of the interpreter's fee shall be a charge
28 against the ~~employer of the investigating peace officer or other~~
29 ~~person questioning or otherwise interviewing the alleged victim~~
30 ~~or witness.~~ *county, or other political subdivision of the state, in*
31 *which the action is pending.*

32 (k) ~~(1)~~—A statement, written or oral, made by an individual who
33 the court finds is deaf or hard of hearing in reply to a question of
34 a peace officer, or any other person having a law enforcement or
35 prosecutorial function in any criminal or quasi-criminal
36 investigation or proceeding, shall not be used against that individual
37 who is deaf or hard of hearing unless the question was accurately
38 interpreted and the statement was made knowingly, voluntarily,
39 and intelligently and was accurately interpreted, or the court finds
40 that either the individual could not have used an interpreter or an

1 interpreter was not otherwise required by Title II of the federal
2 Americans with Disabilities Act of 1990 (Public Law 101-336)
3 and federal regulations adopted thereunder and that the statement
4 was made knowingly, voluntarily, and intelligently.

5 ~~(2) A statement attributed to a person who is deaf or hard of~~
6 ~~hearing shall not be considered by the court unless the statement~~
7 ~~was accurately interpreted, or either the individual could not have~~
8 ~~used an interpreter or an interpreter was not otherwise required by~~
9 ~~Title II of the federal American with Disabilities Act of 1990~~
10 ~~(Public Law 101-336) and federal regulations adopted thereunder.~~
11 ~~A statement interpreted by a court-certified interpreter or an~~
12 ~~interpreter appointed pursuant to subdivision (h) is presumed to~~
13 ~~be accurately interpreted.~~

14 (l) In obtaining services of an interpreter for purposes of
15 subdivision (j) or ~~paragraph (1) of subdivision (k)~~, priority shall
16 be given to first obtaining a ~~court-certified~~ *qualified* interpreter.

17 (m) Nothing in subdivision (j) or ~~paragraph (1) of subdivision~~
18 (k) shall be deemed to supersede the requirement of subdivision
19 (b) for use of a ~~court-certified~~ *qualified* interpreter for an individual
20 who is deaf or hard of hearing participating as a party or witness
21 in a trial or hearing.

22 (n) In any action or proceeding in which an individual who is
23 deaf or hard of hearing is a participant, the appointing authority
24 shall not commence proceedings until the appointed interpreter is
25 in full view of and spatially situated to assure proper
26 communication with the participating individual who is deaf or
27 hard of hearing.

28 (o) *Each superior court shall maintain a current roster of*
29 *qualified interpreters certified pursuant to subdivision (f).*